

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CR-80073-MIDDLEBROOKS/MATTHEWMAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN R. MOORE, JR.
TANNER J. MANSELL,

Defendants.

/

JOINT MOTION TO CONTINUE TRIAL DATE

John Moore, Jr. and Tanner J. Mansell, through undersigned counsel, hereby file this Joint Motion to Continue Trial Date, and in support thereof state as follows:

1. Mr. Moore and Mr. Mansell were indicted on May 5, 2022 and charged with one count of theft of property in violation of 18 U.S.C. § 661. They were arraigned on August 15, 2022 and are currently released on bond.
2. Trial in this matter is scheduled for November 16, 2022. This case has been continued only once before, for two weeks.
3. The Sixth Amendment to the United States Constitution guarantees the accused the right to effective assistance of counsel, which includes “both a fair opportunity to be represented by counsel of his own choice and a sufficient time within which to prepare a defense.” *United States v. Baker*, 432 F.3d 1189, 1248 (11th Cir. 2005) (citing *Gandy v. Alabama*, 569 F.2d 1318, 1321 (5th Cir. 1978)). In some instances, denying a defendant’s motion to continue trial may “vitiate the effect of this fundamental right.” *Schwarz v. United States*, 828 Fed. Appx. 628, 632 (11th Cir. 2020).

4. Courts consider the totality of the circumstances when deciding whether the denial of a defense motion for continuance violates the defendant's constitutional rights. *United States v. Jeri*, 869 F.3d 1247, 1257 (11th Cir. 2017); *Schwartz*, 828 Fed. Appx. at 632. The factors courts consider are the "time available for preparation, the likelihood of prejudice from denial, the accused's role in shortening the effective preparation time, the degree of complexity of the case, and the availability of discovery from the prosecution." *Jeri*, 869 F.3d at 1257. These factors weigh in favor of the defense's request for a continuance.

5. While this case is not necessarily complex, the defense is missing basic information that is crucial to trial preparation. To effectively prepare for trial, undersigned counsel was forced to file a Motion to Compel [DE:32] and Motion for Bill of Particulars [DE:33]. As undersigned counsel explained in its Joint Motion to Compel [DE:32], while the government has turned over some discovery, the defense is still missing several significant items necessary to prepare for trial. Specifically, the defense has requested the NOAA application of Richard Osburn, recordings of calls made to NOAA and Florida Fish and Wildlife, other *Brady* material, *Giglio*, and Jencks Material, a witness list, and an exhibit list. The defense had hoped that the government would turn over these items, but has had to resort to filing motions with the Court which takes more time and has brought the parties precariously close to the trial date. The defense needs time to review these items before trial.

6. With trial less than three weeks away, the defense still needs to subpoena its witnesses, but the defense does not even know who to subpoena because the government has not turned over the witness list or the requested materials. Without access to the requested interview reports, the defense has been attempting to interview potential witnesses that the defense is aware of based on the discovery, but the defense has been unable to reach many of those witnesses. Several key

witnesses live out of state and need to make travel arrangements. Finally, if the government does not turn over materials the defense requested, the defense will have to subpoena those materials and wait for their return. Thus, the defense will be highly prejudiced if they do not have more time to prepare and are forced to go to trial without these necessary items.

7. The lack of preparation time is not the defense's fault—defense counsel and their investigator have been working diligently on this case and have sought necessary information from the prosecution, to no avail. The government has the upper hand in terms of discovery; it has been investigating this case for ***two years***, but Mr. Moore and Mr. Mansell were only arraigned ***two months*** ago. Mr. Moore and Mr. Mansell simply request that their constitutional rights be protected; that cannot happen when their attorneys cannot prepare for trial because the government is unnecessarily hiding the ball.

8. Additionally, counsel for Mr. Mansell has trial currently scheduled on November 21, 2022 in the matter of *United States v. Javet Alvarez-Jurado*, 22-CR-80165-ROSENBERG (calendar call set for November 16).

9. Finally, counsel for Mr. Moore plans to travel to her family in Chicago for Thanksgiving and will be traveling on Tuesday, November 22. Undersigned does not believe that the trial and deliberations will conclude by that time.

10. The defense therefore requests this Court continue the trial date 30 days. Undersigned's requested continuance is not based on lack of diligent preparation by either party; rather, the continuance is necessary to provide Mr. Moore and Mr. Mansell with effective assistance of counsel.

11. Despite all of these reasons, AUSA Thomas Watts-FitzGerald advised undersigned that the government opposes this Motion.

WHEREFORE, based on the foregoing, Mr. Moore and Mr. Mansell respectfully requests this Court grant their Motion to Continue.

Respectfully submitted,

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